HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 324 of 2004 (SS)

Mohd. Shakir Kuraishi ….. Petitioner

Versus

Union of India and others ….. Respondents

Sri M.C. Pant for the petitioner
Standing counsel (Central) for the respondents.

Dated: April 6, 2004

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for both the parties.

Both the parties are agreed that the writ petition may be disposed of at the admission stage.

The present writ petition has been filed fro the issue of a writ, order or direction in the nature of mandamus commanding the respondents to allow disability pension to the petitioner.

Briefly stated the facts giving rise to the present writ petition are that the petitioner was enrolled in the Army on 27.8.1983 and completed his basic training on 24.11.1984. The petitioner while

serving with Training battalion –II suddenly fell ill and thereafter was hospitalised and thereafter the Army authorities have declared the petitioner invalid for Army services and he was relieved from Army on 9.6.1984 without any pensionary benefits. The petitioner was informed by BEG Kirkee through letter No. 1568121/06D dated 11.6.91 that the disease of the petitioner is not attributable to the Military service hence his claim for disability pension has been rejected.

The law regarding disability pension is well settled. The Apex Court in the case Mahavir Singh Rawat vs. Union of India and others 2001 (1) A.W.C. it has been held as under:

"In the case of normal service or individual pension specified 15 years qualifying period of service is required, while disability pension is not dependent on any particular length of service. Disability pension is awarded to an employee who has been invalided on account of disability which has occasioned due to any hurt, injury or illness. Sanction of disability pension, therefore, is not dependent on any particular length of service. The provisions of Para 132 of Pension Regulations are not attracted in the present case. The case of the petitioner for disability pension is squarely covered by the provision of Para 173 of the pension Regulations."

Para 173 of Pension Regulations reads as under:

173.Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over.

The petitioner has prayed that his appeal for the grant of disability pension is pending before respondent no.5 Accountant General CDA Pension Allahabad. The petitioner has stated that he has sent the appeal by registered post on 31.08.2002 to the respondent no.5 but till date no reply has been received.

Considering the above facts and circumstances the respondent no.5 is directed to decide the appeal of the petitioner within six weeks after the receipt of the certified copy of this order. The petitioner is at liberty to file copy of the appeal along with the copy of this order before the competent authority, if it is found that the appeal has not been received in the Department.

The writ petition is disposed of accordingly. No order as to costs.

S/d

6.4.2004
Dhyani